

Memorandum 85-71

Subject: Study L-1028 - Probate Code (Independent Administration)

Attached is a staff draft of a Tentative Recommendation Relating to Independent Administration. This staff draft is presented for Commission approval before it is sent out to interested persons and organizations for review and comment.

The Commission has not previously reviewed a draft statute on this subject. One was prepared for the May 1985 meeting, but the Commission requested that the staff incorporate the changes that the Commission decided to make in Assembly Bill 196 into the draft before it was considered by the Commission. Those changes have been incorporated into the draft. The draft also incorporates changes and suggestions made by the Commission at the March 1985 meeting. The "DRAFTSMAN'S NOTE" found under various sections of the draft identifies those sections that present policy questions.

We urge you to read the entire Tentative Recommendation with care prior to the meeting even though the preliminary portion of the Tentative Recommendation outlines the changes it would make in existing law. The preliminary portion assumes the enactment of Assembly Bill 196 (introduced upon recommendation of the Commission to make improvements in probate law). The improvements made by Assembly Bill 196 include improvements in the independent administration provisions.

Respectfully submitted

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

STAFF DRAFT
(not approved by Commission)

TENTATIVE RECOMMENDATION

relating to

PROBATE LAW

(INDEPENDENT ADMINISTRATION OF ESTATES)

August 1985

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines the recommendation it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN NOVEMBER 15, 1985.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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September 10, 1985

LETTER OF TRANSMITTAL

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The goal is to submit an entire new code to the Legislature for enactment in 1987. The Commission is now sending drafts of portions of the new code to interested persons and organizations for review and comment.

This tentative recommendation set forth the Commission's tentative conclusions concerning the independent administration of estates portion of the new code.

The preliminary portion of the tentative recommendation indicates the principal substantive revisions the proposed legislation would make in existing law.

The proposed legislation is drafted as a part of the new code. In some cases, you may find a reference to other portions of the new code that are in rough draft form and not yet available for distribution for review and comment.

A Comment follows each section of the proposed legislation. The Comment gives the source of the section and indicates any changes the section would make in existing law.

Comments showing the disposition of each existing section that would be superseded by the proposed legislation can be found at the end of the tentative recommendation.

INDEPENDENT ADMINISTRATION

The Independent Administration of Estates Act,¹ enacted in 1974,² permits the court to authorize the personal representative to administer a decedent's estate with a minimum of supervision.³ The personal representative may petition the court for authority to administer the estate under the Act.⁴ The court must grant the authority unless good cause is shown why it should not be granted.⁵ If the authority is granted, many actions that otherwise would be taken under court supervision may be taken without court supervision.⁶ However, the personal representative must give prior advice of many proposed actions to affected persons;⁷ and, if an

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1. Prob. Code §§ 591-591.7.
 2. 1974 Cal. Stats. ch. 961.
 3. The enactment was a response to public criticism of the probate process as requiring too much court involvement and attorneys' time, and being too complex and costly. See Note, Probate Reform: California's Declaration of Independent Administration, 50 S. Cal. L. Rev. 155 (1976).
 4. Prob. Code § 591.1.
 5. Prob. Code § 591.1. See also Prob. Code § 591.7 (revocation of authority where good cause shown). Independent administration authority may not be granted if the decedent's will provides that the decedent's estate shall not be administered under the Act. Prob. Code § 591.1.
 6. Prob. Code § 591.6.
 7. Prob. Code § 591.3-591.4. Advice of the proposed action is required to be given to the devisees and legatees whose interest in the estate is affected by the proposed action; to the heirs of
- (Footnote continued to page 2)

interested person objects, the personal representative may take the proposed action only under court supervision.⁸

The Commission studied the Independent Administration of Estates Act during 1983-1985 and submitted recommendations proposing improvements in the Act.⁹ The enactment of these recommendations¹⁰ avoids the need to make further substantial changes in the Independent Administration of Estates Act. Accordingly, the new code merely reorganizes and restates and generally continues the existing provisions of the Act with the

(Footnote continued from page 1)

the decedent in intestate estates; to the State of California if any portion of the estate is to escheat to it; and to any persons who have filed a request for special notice pursuant to Probate Code Section 1202 (the persons who may request special notice include a creditor, a beneficiary under a trust, any other person interested in the estate, and the State Controller).

Advice of proposed action is required for the following actions: selling or exchanging real property, granting options to purchase real property, selling or exchanging personal property (with certain exceptions), leasing real property for more than a year, entering into any contract (other than a lease of real property) not to be performed within two years, selling, incorporating or operating for longer than six months an unincorporated business of the decedent, commencing payment of or increasing a family allowance or paying a family allowance for more than 12 months after the death of the decedent, investing funds of the estate (with certain exceptions), completing a contract of the decedent to convey real or personal property, borrowing money, executing a mortgage or deed of trust or giving other security, and determining specified claims to real or personal property. Prob. Code § 591.3.

8. Prob. Code § 591.5.

9. Recommendations Relating to Probate Law (Independent Administration of Decedent's Estate), 17 Cal. L. Revision Comm'n Reports 401, 405 (1984). See also 1985 Cal. Stat. chs. 359 and ___ [AB 196], enacted upon recommendation of California Law Revision Commission, 18 Cal. L. Revision Comm'n Reports ___ (1986).

10. 1984 Cal. Stat. ch. 451; 1985 Cal. Stat. chs. 359, ___ [AB 196].

changes noted below.¹¹

Special administrators. Under existing law, the independent administration statute does not apply to special administrators.¹² The new code permits independent administration authority to be granted to a special administrator if the special administrator is appointed with the powers of a general administrator.¹³ This new authority will be useful, for example, in an estate with a lengthy will contest where virtually all of the administration is handled by the special administrator, and the only act which occurs after the final resolution of the will contest is the distribution of the estate assets.

11. Some minor changes are not noted below but are indicated in the Comment to the pertinent provision of the new code.

NOTE TO COMMISSION. The minor changes include the following:

(1) A new requirement that the notice of hearing on a petition that requests independent administration authority include the substance of the following statement: "The petition requests authority to administer under the Independent Administration of Estates Law. This authority would permit estate transactions without the judicial authorization, approval, confirmation, or instructions that would otherwise be required. The petition will be granted unless good cause is shown why it should not be."

(2) A technical revision to make a provision of existing Section 591.6 consistent with a comparable provision of existing Section 591.3. Existing Section 591.6, listing specific independent administration powers, includes a provision for investment of estate money. This provision is revised to make it consistent with the comparable provision of existing Section 591.3 listing actions requiring advice of proposed action.

(3) The addition of a provision to the form for giving advice of proposed action to indicate that the advice of proposed action must be served a prescribed time before the proposed action is to be taken.

12. Prob. Code § 591.1.

13. The independent administration authority will be granted upon request unless (1) good cause is shown why the authority should not be granted or (2) the decedent's will provides that the decedent's estate shall not be administered under independent administration authority.

Use of independent administration procedure for proposed actions not requiring advice of proposed action. The new code includes a new procedure that permits the personal representative to give advice of a proposed action even though the independent administration statute does not require that advice of proposed action be given before taking that action. Failure to object to the proposed action has the same effect as failure to object to a proposed action for which advice of proposed action is required. This new procedure will permit the personal representative to determine whether an interested person objects to the proposed action and will protect the personal representative if no one objects. It will also encourage the personal representative to keep persons interested in the estate informed of proposed actions and will require court approval of the proposed action before it is taken if there is an objection.

Review of actions taken upon court's own motion. Under existing law, failure to object to a proposed action is a waiver of any right to have the court later review the action taken unless the person who fails to object establishes that he or she did not actually receive advice of the proposed action before the time to object expired; but, even though there were no objections to the proposed action, the court on its own motion can review the action of the personal representative after the action is taken.¹⁴

The new code limits the court's power to review on its own motion to cases involving the interests of creditors and cases involving the interests of heirs and devisees who lack capacity or are unborn. The purpose of the advice of proposed action is to bind persons who

14. Prob. Code § 591.5(d).

receive it if they fail to make a timely objection to the proposed action. Limiting the scope of review will further this purpose by protecting the personal administrator from a later objection to the proposed action by a competent person who received the advice of proposed action and failed to make a timely objection to the proposed action.

Application to pending proceedings. Since the new independent administration provisions make only minor changes in existing law, the new provisions are made applicable to proceedings pending on the date the new code becomes operative.

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS 0200a

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DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 5. ESTATE MANAGEMENT

CHAPTER 12. INDEPENDENT ADMINISTRATION OF ESTATES

Article 1. General Provisions§ 8350. Citation of chapter

8350. This chapter shall be known and may be cited as the Independent Administration of Estates Law.

Comment. Section 8350 continues former Section 591 without substantive change.

§ 8351. "Court supervision" defined

8351. As used in this chapter, "court supervision" includes judicial authorization, approval, confirmation, and instructions.

Comment. Section 8351 continues a portion of the second sentence of subdivision (a) of former Section 591.2 without substantive change. See also Section 8365(a)(2) (requirements applicable to court confirmation of sales of real property do not apply to sales under independent administration).

§ 8352. Chapter not applicable if will so provides

8352. The personal representative may not be granted authority to administer the estate under this chapter if the decedent's will provides that the estate shall not be administered under this chapter.

Comment. Section 8352 continues the second sentence of subdivision (a) of former Section 591.1 without substantive change. For purposes of Section 8352, a provision that the estate shall not be administered under former Article 2 of Chapter 8 of Division 3 of the Probate Code (former Sections 591 through 591.1, inclusive), or under the Independent Administration of Estates Act, is a provision that the estate shall not be administered under this chapter.

CROSS-REFERENCES

Definitions

Personal representative § 59

Will § 88

§ 8353. Special administrator

8353. A special administrator may not be granted authority to administer the estate under this chapter unless the special administrator is appointed with the powers of a general administrator.

Comment. Section 8353 supersedes the third sentence of subdivision (a) of former Section 591.1. That sentence of former Section 591.1 provided that the independent administration provisions did not apply to special administrators. Section 8353 permits independent administration authority to be granted to a special administrator if the special administrator is appointed with the powers of a general administrator. See Section [465]. This new authority will be useful, for example, in an estate with a lengthy will contest where virtually all of the administration is handled by the special administrator, and the only act which occurs after the final resolution of the will contest is the distribution of the estate assets. In such a case, the special administrator may obtain independent administration authority unless good cause is shown why the authority should not be granted.

DRAFTSMAN'S NOTE. Letters from the Estate Planning, Trust and Probate Law Section of the State Bar (November 5, 1984) and from the Probate and Trust Law Section of the Los Angeles County Bar Association (December 27, 1984) support the change made in Section 8353.

§ 8354. Application of chapter

8354. (a) This chapter applies to all of the following cases:

(1) Where authority to administer the estate is granted under this chapter.

(2) Where authority to administer the estate was granted under former Sections 591.1 to 591.10, inclusive, on a petition filed after January 1, 1985.

(3) Where authority was granted prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act and one of the following requirements is satisfied:

(A) A petition was filed under former Section 591.1 after January 1, 1985, requesting that the personal representative be granted the full authority that could be granted under the Independent Administration of Estates Act in effect at the time the petition was filed, and the petition was granted.

(B) A petition is filed under this chapter requesting that the personal representative be granted the full authority that can be granted under this chapter, and the petition is granted.

(b) Except as provided in subdivision (a), a personal representative who was granted authority prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act shall continue to administer the estate under the provisions of the Independent Administration of Estates Act that were applicable at the time the petition was granted.

Comment. Section 8354 is a new provision that makes clear that this chapter applies to a pending proceeding where independent administration authority was granted subsequent to January 1, 1985, under the former provisions that governed independent administration authority. Section 8354 also permits a personal representative who was granted independent administration authority prior to January 1, 1985, to exercise the authority granted by this chapter where a petition is filed under this chapter requesting such authority and the petition is granted.

DRAFTSMAN'S NOTE. Section 8354 presents the policy issue whether the new code provisions relating to independent administration should apply to all cases after the operative date of the new code. To avoid the need for lawyers and judges to refer to old law after the new code becomes operative, this chapter is made generally applicable to pending proceedings. The only exception to this general applicability is the case where the personal representative was granted independent administration authority prior to the time the independent administration authority was expanded to include real property transactions and the personal representative did not thereafter obtain expanded independent administration authority.

Making this chapter generally applicable to pending proceedings appears to be the best choice because this chapter makes no significant revisions in the prior law and giving the chapter broad

application avoids the need to refer to two bodies of law after the operative date of the new code. (The new chapter does permit the personal representative to give notice of a proposed action even though the statute does not require that notice be given (see Section 8370) and limits the power of the court to review matters on its own motion (see Section 8380), but these changes should not preclude the new statute from applying to pending proceedings.)

Article 2. Granting or Revoking Independent Administration Authority

§ 8360. Petition for order granting independent administration authority

8360. (a) To obtain authority to administer the estate under this chapter, the personal representative shall petition the court for that authority either in the petition for his or her appointment or in a separate petition filed in the estate proceedings.

(b) A petition under this chapter may request either of the following:

(1) Authority to administer the estate under this chapter.

(2) Authority to administer the estate under this chapter without authority to do either of the following under the authority of this chapter:

(A) Sell or exchange real property.

(B) Grant an option to purchase real property.

Comment. Subdivision (a) of Section 8360 continues the first sentence of subdivision (a) of former Section 591.1 without substantive change. Subdivision (b) continues subdivision (b) of former Section 591.1 without substantive change.

Subdivision (b) of Section 8360 permits the petitioner either (1) to request authority to administer the estate under this chapter (this authority permits the personal representative to administer the estate using the full authority that may be granted under this chapter) or (2) to request authority to administer the estate under this chapter without independent administration authority with respect to real property transactions. The petitioner might request the limited authority that excludes real property transactions in order to avoid the need for an increased bond to cover the estimated net proceeds of real property transactions (see Section 8363). Or the petitioner may request the limited authority because no real property transactions will take place in the course of administration of the estate. Of course, the personal representative is not required to exercise

independent administration authority with respect to a particular transaction merely because he or she has been granted that authority. The personal representative, despite the grant of independent administration authority, may seek court supervision of the transaction. See Section 8365(b). Hence, for example, even though the personal representative has been granted independent administration authority that encompasses real property transactions, the personal representative may sell real property under the statutory provisions that govern real property sales when independent administration authority has not been granted. Likewise, the personal representative may seek court approval or instructions concerning a transaction rather than using independent administration authority because there is a lack of agreement as to the desirability of the transaction among the persons interested in the estate or because some of the heirs or devisees who receive an advice of proposed action lack the capacity to object to the proposed action (see subdivision (c) of Section 8380) or for some other reason.

A special administrator may not be granted independent administration authority unless the special administrator is appointed with the powers of a general administrator. See Section 8353. Authority to administer the estate under this chapter may not be granted where the decedent's will provides that the estate shall not be administered under this chapter. See Section 8352.

CROSS-REFERENCES

Definitions

Personal representative § 59

Real property § 68

Verification of petition § _____

DRAFTSMAN'S NOTE. The provision of Section 8360 that permits the petitioner to request independent administration authority that excludes authority with respect to real property transactions was approved at the March 1985 meeting of the Commission and was enacted as a part of Assembly Bill 196. Such limited independent administration authority may, for example, be requested in order to avoid having to provide a bond that includes the estimated net proceeds of the potential real property transactions.

At the March 1985 meeting, it was suggested that the staff consider whether the petitioner should be permitted to request independent administration authority with respect only to one or more types of transactions or with respect to a particular transaction or to request independent administration authority subject to specified limitations, restrictions, or conditions. Upon reviewing the matter, the staff recommends against including such a provision in the statute for two reasons. First, the provision is not necessary because the

personal representative is not required to exercise independent administration authority with respect to a particular transaction; the personal representative can seek court authorization, approval, confirmation, or instructions concerning a particular transaction even though the personal representative has been granted independent administration authority that would include that transaction. Second, and this is the reason for the staff recommendation, provisions that would permit granting of authority subject to specific limitations or only authority with respect to a specific transaction or other variations of authority would make the Judicial Council forms much more complicated and would make the letters more complicated (since the letters must be endorsed with the independent administration authority granted) and would make it more difficult for persons dealing with the personal representative to determine whether the particular transaction is authorized under independent administration authority. In view of this complexity and because the complexity serves no purpose (since the personal representative is not required to use the authority), the staff draft continues existing law which does not attempt to do more than to permit the petitioner to exclude real property transactions from the independent administration authority, a limitation that is useful since it may in some cases avoid the need for an increase in the amount of the bond.

§ 8361. Notice of hearing

8361. (a) If the authority to administer the estate under this chapter is requested in the petition for appointment of the personal representative, notice of the hearing on the petition shall be given to the persons and in the manner prescribed in Chapter 2 (commencing with Section 7230) of Part 2 of Division 7 and shall be included in the notice of hearing required by that chapter.

(b) Where proceedings for the administration of the estate are pending at the time a petition is filed under Section 8360, notice of the hearing on the petition shall be given for the period and in the manner required by Section [1200]. At least 10 days before the date set for hearing of the petition by the court, the petitioner shall cause notice of the hearing to be mailed to all devisees and to all

known heirs of the decedent and to all persons who have requested notice as provided in Section [1202].

(c) The notice of hearing, whether included in the petition for appointment or in a separate petition, shall include the substance of the following statement: "The petition requests authority to administer under the Independent Administration of Estates Law. This authority would permit estate transactions without the judicial authorization, approval, confirmation, or instructions that would otherwise be required. The petition will be granted unless good cause is shown why it should not be."

Comment. Subdivision (a) of Section 8361 continues subdivision (c) of former Section 591.1 without substantive change. Subdivision (b) continues subdivision (d) of former Section 591.1 without substantive change. Subdivision (c) continues the substance of subdivision (e) of former Section 591.1 but adds the requirement that the notice of hearing contain the substance of the statement set out in the statute concerning the nature of the petition.

CROSS-REFERENCES

Clerk to set petition for hearing § 7142

Definitions

Personal representative § 59

DRAFTSMAN'S NOTE. At the suggestion of one commissioner at the March 1985 meeting, Section 8361 specifies the substance of a statement that is required to be included in the notice of hearing. This statement gives the person receiving the notice more information concerning the nature of the petition, but it may increase the cost of publication because it adds four or five lines to the material that must be published.

§ 8362. Hearing; order; endorsement on letters

8362. (a) Any interested person may appear and object to the granting of authority to administer the estate under this chapter by filing a written statement setting forth the objection.

(b) Unless the court determines that the objecting party has shown good cause why the authority requested in the petition should not be granted, the court shall grant the requested authority.

(c) The letters testamentary or of administration shall be endorsed to the effect that the letters are issued under this chapter

and, if the authority granted excludes authority to sell or exchange real property or grant options to purchase real property under this chapter, that limitation shall be included in the endorsement.

Comment. Section 8362 continues subdivisions (f) and (g) of former Section 591.1 without substantive change. Subdivision (c) of Section 8362 recognizes that independent administration authority may exclude real property transactions. See Section 8360(b).

CROSS-REFERENCES

Definitions

Interested person § 48

Real property § 68

Limited independent administration authority § 8360(b)(2)

§ 8363. Increase in amount of bond

8363. If the personal representative is otherwise required to file a bond and is authorized to sell real property of the estate without court supervision under this chapter, the court, in its discretion, may fix the amount of the bond at not less than the estimated value of the personal property, the estimated net proceeds of the real property authorized to be sold under this chapter, and the estimated value of the probable annual gross income of all the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

Comment. Section 8363 continues subdivision (b) of Section 591.9 without substantive change.

DRAFTSMAN'S NOTE. This section should be referred to under the section that specifies how the amount of the bond is to be determined.

CROSS-REFERENCES

Definitions

Court supervision § 8351

Personal property § 58

Personal representative § 59

Property § 62

Real property § 68

Limited independent administration authority §§ 8360(b)(2), 8362(b)

§ 8364. Revocation of independent administration authority

8364. (a) Any interested person who objects to continued administration of the estate under this chapter may file a petition setting forth the basis for revoking the authority of the personal

representative to continue administration of the estate under this chapter.

(b) Notice of the hearing on the petition shall be served on the personal representative in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

(c) If the court determines that good cause has been shown, the court shall make an order revoking the authority of the personal representative to continue administration of the estate under this chapter.

(d) Upon the making of an order under this section, new letters testamentary or letters of administration shall be issued without the endorsement described in subdivision (c) of Section 8362.

Comment. Section 8364 continues former Section 591.7 without substantive change.

CROSS-REFERENCES

Clerk sets petition for hearing § 7142

Definitions

Interested person § 48

Personal representative § 59

Verification of petition § _____

Article 3. Administration Under Independent Administration Authority

§ 8365. Administration without court supervision

8365. (a) Except as provided in this article, and subject to Article 4 (commencing with Section 8370) and the applicable fiduciary duties, a personal representative who has been granted authority to administer the estate under this chapter may:

(1) Administer the estate without court supervision as provided in this chapter, but in all other respects the personal representative shall administer the estate in the same manner as a personal representative who has not been granted authority to administer the estate under this chapter.

(2) Sell property of the estate either at public auction or private sale, and with or without notice, for such price and upon such terms and conditions as the personal representative may determine, and

the requirements applicable to court confirmation of sales of real property, including publication of notice of sale, court approval of agents' and brokers' commissions, and sale at not less than 90 percent of appraised value, do not apply to sales made under authority granted under this chapter. This paragraph applies to any sale made under authority of this chapter on or after January 1, 1985.

(b) Notwithstanding subdivision (a), the personal representative may obtain court supervision as provided in this code of any action taken by him or her during administration of the estate.

(c) All publications of notice required by this code shall continue to be given except when no hearing is required because the personal representative does not seek court supervision of an action or proposed action.

Comment. Subdivision (a) of Section 8365 continues the first sentence and the first portion of the second sentence of former Section 591.2 and subdivision (a) of former Section 591.9 without substantive change. See also Section 8351 (defining "court supervision"). Paragraph (2) of subdivision (a) is designed to make clear that sales under independent administration authority are not subject to the statutory requirements that apply to sales made under court supervision. Thus, for example, the commission of the realtor who lists or obtains the purchaser of real property sold under independent administration authority is not subject to the approval of the court. Nor does the 90-percent-of-appraised-value requirement apply when a sale is under independent administration authority. Publication of notice of sale is not required where there will be no court hearing because the sale is made under independent administration authority.

Subdivision (b) of Section 8365 continues the first sentence of subdivision (b) of former Section 591.2 without substantive change. Subdivision (c) continues the second sentence of subdivision (b) of former Section 591.2 without substantive change.

As the introductory clause of Section 8365 recognizes, a personal representative who has been granted only limited authority under this chapter may not exercise authority with respect to matters not included within the scope of the authority granted. See Section 8366(e). See also Sections 8360(b)(2) and 8362(b) (limited independent administration authority). The introductory clause also recognizes that independent administration authority must be exercised in compliance with the provisions of this chapter. See Article 4 (commencing with Section 8370) (giving advice of proposed action). And the exercise of the authority under this chapter is subject to the requirement that the personal representative act in a fiduciary capacity in exercising the authority. See Section 8365 (introductory clause). See also Section _____ (fiduciary duty of personal representative).

CROSS-REFERENCES

Definitions

Court supervision § 8351

Personal representative § 59

Limited independent administration authority §§ 8360(b)(2), 8362(b)

§ 8366. Matters requiring court supervision

8366. A personal representative who has obtained authority to administer the estate under this chapter is, nevertheless, required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(a) Allowance of commissions of the personal representative

(b) Allowance of attorney's fees.

(c) Settlement of accountings.

(d) Preliminary and final distributions and discharge.

(e) Sale or exchanges of real property and grant of options to purchase real property if the authority of the personal representative granted under this chapter specifically excludes the authority to take such actions under the authority of this chapter.

Comment. Section 8366 continues the last portion of the second sentence of subdivision (a) of former Section 591.2 without substantive change. In connection with subdivision (e) of Section 8366, see Sections 8360(b)(2) and 8362(b) (limited independent administration authority).

CROSS-REFERENCES

Definitions

Court supervision § 8351

Personal representative § 59

Limited independent administration authority §§ 8360(b)(2), 8362(b)

§ 8367. Specific independent administration powers

8367. Unless restricted by the will and subject to Section 8366, a personal representative who has been granted authority to administer the estate under this chapter has all of the following powers, in addition to any other powers granted by this code, which powers can be exercised in the manner provided in this chapter:

(a) To manage, control, convey, divide, exchange, partition, and to sell for cash or on credit; to lease for any purpose, including exploration for and removal of gas, oil, or other minerals; to enter

into community oil leases; and to grant options to purchase real property for a period within or beyond the administration of the estate.

(b) To invest and reinvest money of the estate in any one or more of the following:

(1) Deposits in banks and insured savings and loan association accounts.

(2) Units of a common trust fund described in Section [585.1].

(3) Eligible securities for the investment of surplus state moneys as provided for in Section 16430 of the Government Code.

(4) Mutual funds which are comprised of (A) direct obligations of the United States maturing not later than one year from the date of investment or reinvestment, or (B) repurchase agreements with respect to any obligation, regardless of maturity, in which the fund is authorized to invest.

(c) Invest and reinvest any surplus moneys in his or her hands in any manner provided by the will.

(d) To borrow; and to place, replace, renew or extend any encumbrance upon any property in the estate.

(e) To abandon worthless assets or any interest therein.

(f) To make ordinary or extraordinary repairs or alterations in buildings or other property.

(g) To vote a security, in person or by general or limited proxy.

(h) To sell or exercise stock subscription or conversion rights.

(i) To hold a security in the name of a nominee or in any other form without disclosure of the estate, so that title to the security may pass by delivery, but the personal representative is liable for any act of the nominee in connection with the security so held.

(j) To insure the assets of the estate against damage or loss and to insure the personal representative against liability with respect to third persons.

(k) To allow, pay, reject, contest, and compromise any claim by or against the estate; to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible; and to institute, compromise, and defend actions and proceedings.

(l) To pay taxes, assessments, and other expenses incurred in the collection, care, and administration of the estate.

(m) To continue the operation of the decedent's business to the extent the personal representative determines that to be for the best interest of the estate and those interested therein.

(n) To pay a reasonable family allowance.

(o) To make a disclaimer.

(p) To grant an exclusive right to sell property, for a period not to exceed 90 days, where the personal representative determines that to be necessary and advantageous to the estate.

Comment. Section 8367 continues former Section 591.6 without substantive change but paragraphs (2) (authorization to invest in units of a common trust fund described in Section [585.1]) and (4) (authorization to invest in certain mutual funds) are added to subdivision (b) of Section 8367 to conform Section 8367 to subdivision (h) of Section 8371. The words "by compromise," which appeared in the comparable provision of former law, are omitted at the end of the first clause of subdivision (k) as unnecessary.

The personal representative must exercise the powers listed in Section 8367 in the manner provided in this chapter. Accordingly, if the action to be taken is one listed in Section 8371, the personal representative can take the action only if the requirements of Article 4 (commencing with Section 8370) (advice of proposed action) are satisfied. See Section 8370. The powers listed in this section are subject to any limitations on the powers granted to the personal representative to administer the estate under this chapter. See Section 8366(e) (real property transactions). See also Sections 8360(b)(2), 8362(b) (limited independent administration authority). The personal representative must also comply with the applicable fiduciary duties in exercising independent administration powers. See Section ____.

CROSS-REFERENCES

Definitions

Person § 56
Personal representative § 59
Property § 62
Real property § 68
Security § 70
Will § 88

DRAFTSMAN'S NOTE. The reference to investing in units of a common trust fund described in Section 585.1 is added to subdivision (b) of Section 8367 to conform to subdivision (h) of Section 8371. The reference to investing in certain mutual funds is added by subdivision (b)(4) to Section 8367 to conform to subdivision (h) of Section 8371.

Article 4. Advice of Proposed Action

§ 8370. Giving advice of proposed action

8370. (a) Prior to the consummation of any of the actions described in Section 8371 without court supervision, a personal representative who has been granted authority to administer the estate under this chapter shall give advice of proposed action as provided in this article.

(b) A personal representative who has been granted authority to administer the estate under this chapter may, but need not, give advice of proposed action prior to taking an action that is not described in Section 8371. Nothing in this subdivision authorizes a personal representative to take any action the personal representative is not otherwise authorized to take.

Comment. Subdivision (a) of Section 8370 continues paragraph (1) of subdivision (a) of former Section 591.3 without substantive change.

Subdivision (b) of Section 8370 is a new provision that permits a personal representative to use the procedure provided in this article with respect to an action that the personal representative proposes to take even though the action is not one for which advice of proposed action is required. For example, the personal representative may want to use the provision where the proposed action is the compromise of a claim by or against the estate (see Section 8367(k)). This action is one that ordinarily does not require an advice of proposed action. See Section 8371 (actions requiring advice of proposed action). If the procedure provided by this article is used with respect to the proposed action, those persons who receive the advice of proposed action and fail to object waive any right to have the court later review the action taken unless the person establishes that he or she did not actually receive the advice of proposed action before the time to object expired or lacked the capacity to object. See Section 8380. See also Section 8379(b) and the Comment to that section. Use of the advice of proposed action procedure avoids the need to petition the court for instructions on the proposed compromise in order to preclude a later challenge to the accounts of the personal representative.

CROSS-REFERENCES

Definitions

Personal representative § 59

DRAFTSMAN'S NOTE. Section 8370 introduces a new concept into the independent administration statute. Subdivision (b) permits the

personal representative to give notice of a proposed action even though the statute does not require that notice be given. Failure to object to the proposed action has the same effect as failure to object to a proposed action for which advice of proposed action is required. This procedure permits the personal representative to determine whether an interested person objects to the proposed action and protects the personal representative if no one objects. It also encourages the personal representative to keep persons interested in the estate informed of proposed actions and requires court review of a proposed action before it is taken if there is an objection.

§ 8371. Actions requiring advice of proposed action

8371. The actions requiring advice of proposed action are all of the following:

(a) Selling or exchanging real property.

(b) Granting options to purchase real property.

(c) Selling or exchanging personal property, except for securities sold upon an established stock or bond exchange and other assets referred to in [Sections 770 and 771.5] when sold for cash.

(d) Leasing real property for a term in excess of one year.

(e) Entering into any contract, other than a lease of real property, not to be performed within two years.

(f) Continuing for a period of more than six months from the date of appointment of the personal representative of an unincorporated business or venture in which the decedent was engaged or which was wholly or partly owned by the decedent at the time of the decedent's death, or the sale or incorporation of such a business.

(g) The first payment, the first payment for a period commencing 12 months after the death of the decedent, and any increase in the payments, of a family allowance.

(h) Investing funds of the estate, except depositing funds in banks and investing in insured savings and loan association accounts, in units of a common trust fund described in Section [585.1], in direct obligations of the United States maturing not later than one year from the date of investment or reinvestment, and in mutual funds which are comprised of (1) those obligations, or (2) repurchase

agreements with respect to any obligation, regardless of maturity, in which the fund is authorized to invest.

(i) Completing a contract entered into by the decedent to convey real or personal property.

(j) Borrowing money or executing a mortgage or deed of trust or giving other security.

(k) Determining third-party claims to real and personal property if the decedent died in possession of, or holding title to, the property, or determining the decedent's claim to real or personal property title to or possession of which is held by another.

Comment. Section 8371 continues subdivision (b) of former Section 591.3 without substantive change.

CROSS-REFERENCES

Definitions

Personal property § 58
Personal representative § 59
Real property § 68
Security § 70

§ 8372. Persons to whom advice of proposed action must be given

8372. Except as provided in Sections 8373 and 8374, advice of proposed action shall be given to all of the following:

(a) Each devisee whose interest in the estate is affected by the proposed action.

(b) Each heir of the decedent if the estate is an intestate estate.

(c) Each person who has filed a request for special notice pursuant to Section [1202].

(d) The State of California if any portion of the estate is to escheat to it.

Comment. Section 8372 continues the introductory clause and paragraph (2) of subdivision (a) of former Section 591.3 without substantive change.

CROSS-REFERENCES

Consent to proposed action § 8373

Definitions

Devisee § 34

Heirs § 44
Person § 56
Waiver of right to receive advice of proposed action § 8374

§ 8373. Consent to proposed action

8373. Advice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

Comment. Section 8373 continues subdivision (c) of former Section 591.3 without substantive change. The section provides a method that can be used to avoid the delay that otherwise would result from the requirement that a person given advice of proposed action be allowed a specified period of time--see Section 8376(b) and (c) and Section 8377--within which to object to the proposed action.

CROSS-REFERENCES

Definitions

Person § 56

§ 8374. Waiver of advice of proposed action

8374. (a) The advice of proposed action need not be given to any person who, in writing, waives his or her right to the advice of proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver shall describe the particular proposed action and may waive particular aspects of the advice, such as the delivery, mailing, or time requirements of Section 8376, or the giving of the advice in its entirety for the particular proposed action.

Comment. Section 8374 continues subdivision (d) of former Section 591.3 without substantive change. The section permits a person entitled to advice of proposed action to execute a written waiver that would, for example, permit notice of a proposed action to be given to the person by telephone so that the proposed action can be expeditiously completed if the person does not object. In such a case, if the person is agreeable to the sale of real property of the estate, the waiver could be drafted in terms that would permit the personal representative to call the person on the telephone to advise the person of an offer to buy the property and to permit the sale of the property at the price and on the terms offered if the person called is agreeable or at a price and on the terms of a counter-offer that is agreeable to the person called.

CROSS-REFERENCES

Advice of proposed action
Delivery or mailing requirement § 8376
Definitions
Person § 56

§ 8375. Form and contents of advice of proposed action

8375. (a) The advice of proposed action shall be in a form that satisfies the requirements of Article 5 (commencing with Section 8390).

(b) The advice of proposed action shall contain the information required by Article 5 (commencing with Section 8390).

Comment. Section 8375 supersedes the third and fifth sentences of former Section 591.4. Section 8375 makes no substantive change in the form and contents requirements for an advice of proposed action, but the requirement that the advice satisfy the form and information requirements of Article 5 (see the Comment to Section 8390) is substituted in Section 8375 for the duplicative and somewhat incomplete statement of the required contents that appeared in former Section 591.4.

CROSS-REFERENCES

Definitions
Person § 56
Personal representative § 59
Real property § 68
Form for advice of proposed action §§ 8390, 8391
Time for mailing or delivery of advice § 8376

§ 8376. Delivery or mailing of advice of proposed action and copy of form for objecting to proposed action

8376. (a) The advice of proposed action shall be delivered personally to each person required to be given advice of proposed action or sent by first-class mail to the person at the person's last known address. If the advice of proposed action is mailed to a person who resides outside the United States, it shall be sent by air mail.

(b) If the advice of proposed action is delivered personally, it shall be delivered to the person not less than 15 days before the date specified in the advice of proposed action on or after which the proposed action is to be taken.

(c) If the advice of proposed action is sent by mail, it shall be deposited in the mail not less than 20 days before the date specified

in the advice of proposed action on or after which the proposed action is to be taken.

(d) A copy of the form prepared by the Judicial Council for objecting to a proposed action shall accompany the advice of proposed action.

Comment. Subdivision (a) of Section 8376 continues the first sentence of former Section 591.4 without substantive change. Subdivisions (b) and (c) continue the substance of the fourth sentence of former Section 591.4. Subdivision (d) continues the second sentence of former Section 591.4 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Form for objecting to proposed action § 8392

DRAFTSMAN'S NOTE. When general provisions governing the manner of giving notice by mail are drafted this section should be reviewed.

§ 8377. Objection to proposed action

8377. A person given advice of proposed action who desires to object to the proposed action shall deliver or mail a written objection to the personal representative at the address stated in the advice of proposed action, so that the objection is received before the date specified in the advice of proposed action on or after which the proposed action is to be taken, or before the proposed action is actually taken, whichever is the later time.

Comment. Section 8377 continues subdivision (a)(2) of former Section 591.5 without substantive change, except that Section 8377 makes clear that only a person given advice of proposed action can object in the manner provided in Section 8377. Section 8377 applies whether the the advice of proposed action is given pursuant to subdivision (a) of Section 8370 (giving of advice mandatory) or under subdivision (b) of that section (giving of advice permissive). See Section 8380 (effect of failure to object).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 59

Mailing §§ _____

§ 8378. Restraining order

8378. If a proposed action would require court supervision if the personal representative had not been granted authority to administer the estate under this chapter and a person described in Section 8372 objects to the taking of the proposed action without court supervision, the person may apply to the court having jurisdiction over the proceeding for an order restraining the personal representative from taking the proposed action without court supervision under the provisions of this code dealing with court supervision of such action. The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order. The person who obtained the order may serve it upon the personal representative in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in the manner authorized by the court.

Comment. Section 8378 continues subdivision (a)(1) of former Section 591.5 without substantive change. Section 8378 applies only where the personal representative is required to give advice of proposed action, not where the personal representative gives advice of proposed action in a case where the advice was not required. See Section 8370(a).

CROSS-REFERENCES

Definitions

Court supervision § 8351

Person § 56

Personal representative § 59

§ 8379. Court supervision and notice of hearing required if objection made

8379. (a) If the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate under this chapter and the personal representative has notice of a written objection made under Section 8377 or a restraining order issued under Section 8378, the personal representative shall, if he or she desires to take the proposed action, submit the proposed action to the court for approval following the provisions of this code dealing with court supervision of that

kind of action and may take the proposed action only under such order as may be entered by the court.

(b) If the proposed action is one that would not require court supervision even if the personal representative had not been granted authority to administer the estate under this chapter but the personal representative has given advice of the proposed action and has notice of a written objection made under Section 8377 to the proposed action, the personal representative shall, if he or she desires to take the proposed action, request instructions from the court concerning the proposed action and may take the proposed action only under such order as may be entered by the court.

(c) A person who objects to a proposed action as provided in this section shall be given notice of any hearing on a petition for court authorization or confirmation of the proposed action.

(d) Failure of the personal representative to comply with this section is a violation of his or her fiduciary duties and is grounds for removal from office.

Comment. Subdivisions (a) and (d) of Section 8379 continue subdivision (b) of former Section 591.5 without substantive change.

Subdivision (b) of Section 8379 is new and implements subdivision (b) of Section 8370. Subdivision (b) of Section 8370 permits a personal representative who has been granted independent administration authority to give advice of proposed action with respect to a proposed action that could be taken without giving advice of proposed action. The personal representative may give advice of proposed action (although not required to do so) in order that the person receiving the advice will waive the right to object to the proposed action if the person fails to object within the time allowed after receipt of the advice. However, if the personal representative determines to use this procedure for an action that could be taken without giving advice of proposed action, the personal representative may not go ahead with the proposed action if he or she has notice of an objection, and may only take the proposed action if authorized by the court upon hearing of a petition for instructions. The benefit of this procedure is that it permits a court review of the proposed action before it is taken if the personal representative has notice of an objection rather than having the objection first made after the action has been taken. For further discussion, see the Comment to Section 8370.

Subdivision (c) of Section 8379 continues subdivision (e) of former Section 591.5 without substantive change. This subdivision requires that notice of hearing be given to a person who has made a written objection under Section 8377 or has served a restraining order under Section 8378. See Section 8380(a).

CROSS-REFERENCES

Definitions

Court supervision § 8351

Personal representative § 59

DRAFTSMAN'S NOTE. Subdivision (d) of Section 8379 should be cross referred under the section listing the grounds for removal from office.

Subdivision (b) of Section 8379 presents a significant policy issue. See discussion in the Comment to Section 8379.

§ 8380. Effect of failure to object to proposed action

8380. (a) A person who has been given advice of proposed action as provided in Sections 8370 to 8376, inclusive, may object to the proposed action only by one or both of the following methods:

(1) Delivering or mailing a written objection as provided in Section 8377.

(2) Serving a restraining order obtained under Section 8378 before the date specified in the advice of proposed action on or after which the proposed action is to be taken, or before the proposed action is actually taken, whichever is the later time.

(b) The failure to object is a waiver of any right to have the court later review the action taken unless the person who fails to object establishes that he or she did not actually receive the advice of proposed action before the time to object expired.

(c) Notwithstanding subdivision (b), the court may review the action of the personal representative on its own motion where necessary to protect the interests of creditors of the estate or the interests of a heir or devisee who, at the time the advice was given, lacked capacity to object to the proposed action or was a minor or was unborn. The court may also review the action of the personal representative upon motion of a person who was entitled to receive advice of proposed action but did not receive the advice of proposed action before the time to object expired.

Comment. Subdivision (a) of Section 8380 continues the substance of the first sentence of subdivision (d) of former Section 591.5. Subdivision (b) continues the second sentence of subdivision (d) of former Section 591.5 without substantive change. Subdivision (c) supersedes the last sentence of subdivision (d) of former Section

591.5. Subdivision (c) narrows the situations where the court can review the action of the personal representative on its own motion to cases where necessary to protect the interests of creditors of the estate or a heir or devisee who lacked capacity to object to the proposed action or was unborn. The court is not authorized to review the proposed action on motion of a person who consented to the proposed action (Section 8373) or waived the advice of proposed action (Section 8374). See the Comments to Sections 8373 and 8374.

CROSS-REFERENCES

Definitions

Devisee § 34
Heirs § 44
Person § 56
Personal representative § 59

DRAFTSMAN'S NOTE. Section 8380 modifies former law to limit the court's power of review on its own motion to cases involving the interests of creditors or beneficiaries who lack capacity or are unborn. The purpose of the advice of proposed action is to bind persons who receive it if they fail to object to the proposed action. Limiting the scope of review in this manner was suggested by lawyer Jeffrey Dennis-Strathmeyer in a letter and orally by others.

§ 8381. Protection of persons dealing in good faith with personal representative

8381. (a) The failure of the personal representative to comply with subdivision (a) of Section 8370, with Sections 8372, 8375, 8376, and 8379, and with Article 5 (commencing with Section 8390), and the taking of the action by the personal representative without such compliance, does not affect the validity of the action so taken or the title to any property conveyed or transferred to bona fide purchasers or the rights of third persons dealing in good faith with the personal representative who changed their position in reliance upon the action, conveyance, or transfer without actual notice of the failure of the personal representative to comply with those provisions.

(b) No person dealing with the personal representative has any duty to inquire or investigate whether or not the personal representative has complied with the provisions listed in subdivision (a).

Comment. Section 8381 continues subdivision (b) of former Section 591.4 and subdivision (c) of former Section 591.5 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56
Personal representative § 59
Property § 62

Article 5. Forms

§ 8390. Judicial Council form for advice of proposed action

8390. If the Judicial Council prescribes a form for advice of proposed action, the form prescribed by the Judicial Council shall be used to give advice of proposed action.

Comment. Section 8390 is new. If the Judicial Council has not prescribed a form for advice of proposed action, the form prescribed by Section 8391 must be used.

§ 8391. Form for advice of proposed action.

8391. Unless the Judicial Council prescribes a form for advice of proposed action, the advice of proposed action shall be in substantially the following form and shall contain the information required by the following form:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF _____

Estate of

No. _____

deceased

ADVICE OF PROPOSED ACTION
(Probate Code Section 8391)

1. The personal representative of the estate of the deceased is:

(Name(s))

2. The personal representative has authority to administer the estate without court supervision under the Independent Administration

of Estates Law (California Probate Code Sections 8350-8392).

3. On or after _____, 19___, the personal representative will

[Enter the date on or after which the proposed action is to be taken. (The advice of proposed action must be delivered not less than 15 days before this date if it is personally delivered or deposited in the mail not less than 20 days before this date if it is sent by mail.)]

take the following action:

[Describe proposed action in reasonably specific terms. If the proposed action involves a sale or exchange of real property or an option to purchase real property, (1) state the material terms of the transaction, including any sale price and the amount of or method of calculating any compensation paid or to be paid to an agent or broker in connection with the transaction, (2) state the amount of any probate inventory valuation of the property on file with the court, and (3) set forth the following statement: "A sale of real property without court supervision means that the sale will not be presented to the court for confirmation at a hearing at which higher bids for the property may be presented and the property sold to the highest bidder."].

4. If you need more information, you may call:

(Name)

(Telephone number)

5. If you object to the proposed action, you may deliver or mail a written objection to the personal representative at the following address: _____

Your objection can be simply stated. All you need to do is state that you object to the proposed action (specifying the action you object to) and sign your name(s). Alternatively, you may also apply to the court for an order preventing the personal representative from taking the proposed action without court supervision.

6. Your written objection or the court order must be received by the personal representative before the date specified above, or before the proposed action is taken, whichever is later. If you object, the personal representative may take the proposed action only under court supervision.

7. IF YOU DO NOT OBJECT IN WRITING OR OBTAIN A COURT ORDER PREVENTING THE PROPOSED ACTION, YOU WILL BE TREATED AS IF YOU CONSENTED TO THE PROPOSED ACTION, AND YOU MAY NOT OBJECT AFTER THE PROPOSED ACTION IS TAKEN.

Dated: _____

(Signature of personal representative or
attorney for personal representative)

Comment. Section 8391 continues former Section 591.8 with the addition of an informational statement in the form concerning the time for delivery or mailing of the advice of proposed action. The form is designed to provide the person receiving an advice of proposed action with the information the person needs in order to react to the advice. The form prescribed by this section may be superseded by a Judicial Council form. If the Judicial Council has prescribed a form for advice of proposed action, the Judicial Council form must be used instead of the form prescribed by this section. See Section 8390.

CROSS-REFERENCES

Definitions

Court supervision § 8351
Personal representative § 59
Real property § 68

§ 8392. Judicial Council form for objecting to proposed action

8392. (a) The Judicial Council shall prepare a form that a person may use to object to a proposed action pursuant to Section 8377.

(b) A person who wishes to object to a proposed action either may use the Judicial Council form or may make the objection in any other writing that satisfies the requirements of this chapter.

Comment. Section 8392 continues subdivision (b) of former Section 591.8 without substantive change.

CROSS-REFERENCES

Sending form with advice of proposed action § 8376

DISPOSITION OF REPEALED PROBATE CODE SECTIONS

Probate Code § 591 (repealed). Short title

Comment. Former Section 591 is superseded by Section 8350.

Probate Code § 591.1 (repealed). Petition for independent administration authority

Comment. The first sentence of former Section 591.1 is continued in Section 8360(a) without substantive change. The second sentence is continued in Section 8352 without substantive change. The third sentence is superseded by Section 8353. See the Comment to Section 8353. The requirement that the clerk set the petition for hearing is continued in Section 7142, which is a general provision. Subdivision (b) of former Section 591.1 is continued in Section 8360(b) without substantive change. Subdivisions (c) and (d) are continued without substantive change in subdivisions (a) and (b), respectively, of Section 8361. Subdivision (e) is continued in substance in subdivision (c) of Section 8361 with additions. Subdivision (f) is continued without substantive change in subdivision (a) of Section 8362. Subdivision (g) is continued without substantive change in subdivisions (b) and (c) of Section 8362.

Probate Code § 591.2 (repealed). Manner of administration; court supervision

Comment. The first two sentences of subdivision (a) of former Section 591.2 are continued without substantive change in paragraph (1) of subdivision (a) of Section 8365 except that the portion of the second sentence defining "court supervision" is continued without substantive change in Section 8351. The portion of subdivision (a) stating the matters that require court supervision is continued in Section 8366 without substantive change. The first sentence of subdivision (b) is continued in subdivision (b) of Section 8365 without substantive change. The second sentence of subdivision (b) is superseded by subdivision (c) of Section 8365. See the Comment to Section 8365.

Probate Code § 591.3 (repealed). Advice of proposed action

Comment. Paragraph (1) of subdivision (a) of former Section 591.3 is continued in subdivision (a) of Section 8370 without substantive change. The portion of the second sentence defining "advice of proposed action" is omitted as unnecessary since the term "advice of proposed action" is uniformly used in the new statutory provisions. The remainder of the second sentence and the introductory clause of subdivision (a) are continued in Section 8372 without substantive change. Subdivision (b) of former Section 591.3 is continued in

Section 8371 without substantive change. Subdivision (c) of former Section 591.3 is continued in Section 8373 without substantive change. Subdivision (d) is continued in Section 8374 without substantive change.

Probate Code § 591.4 (repealed). Notice of proposed action

Comment. The first sentence of former Section 591.4 is restated without substantive change in Section 8376(a). The second sentence is continued without substantive change in subdivision (d) of Section 8376. The third and fifth sentences are superseded by Section 8375. See the Comment to Section 8375. The fourth sentence is continued in substance in subdivisions (b) and (c) of Section 8376. Subdivision (b) of former Section 591.4 is continued without substantive change in Section 8381.

Probate Code § 591.5 (repealed). Objection to proposed action

Comment. Subdivision (a)(1) of former Section 591.5 is continued in Section 8378 without substantive change. Subdivision (a)(2) is continued without substantive change in Section 8377, but the former provision is made applicable to any case where advice of proposed action is given, whether or not the proposed action is one for which advice of proposed action is required. Subdivision (b) is continued without substantive change in subdivisions (a) and (d) of Section 8379. Subdivision (c) is continued in Section 8381 without substantive change. The substance of the first sentence of subdivision (d) is continued in subdivision (a) of Section 8380. The second sentence of subdivision (d) is continued without substantive change in subdivision (b) of Section 8380. The last sentence of subdivision (d) is superseded by subdivision (c) of Section 8380. See the Comment to Section 8380. Subdivision (e) is continued without substantive change in subdivision (c) of Section 8379.

Probate Code § 591.6 (repealed). Independent administration powers

Comment. Former Section 591.6 is continued in substance in Section 8367 with a clarifying revision in language.

Probate Code § 591.7 (repealed). Revocation of independent administration authority

Comment. Former Section 591.7 is continued in Section 8364 without substantive change. The provision of former Section 591.7 requiring that the clerk set the petition for hearing is continued in Section 7142 which is a general provision.

Probate Code Section 591.8 (repealed). Form of advice of proposed action.

Comment. Subdivision (a) of former Section 591.8 is continued in substance in Section 8391 with some additions. See the Comment to Section 8391. Subdivision (b) is continued in Section 8392 without substantive change.

Probate Code Section 591.9 (repealed). Sales of property.

Comment. Subdivision (a) of former Section 591.9 is continued without substantive change in Section 8365(a)(2). Subdivision (b) is continued in Section 8363 without substantive change.